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Supreme Court, U.S.
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~~No. 1562~~

In the Supreme Court of the United States

OCTOBER TERM, 1970

CHARLES JOSEPH KASTIGAR AND MICHAEL GOREAN STEWART, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioners were adjudged in civil contempt by the United States District Court for the Central District of California for refusal to answer questions of a grand jury, despite the fact that each had been granted immunity under Section 201(a) of the Organized Crime Control Act of 1970, 84 Stat. 927, 18 U.S.C. 6002. Their claim is that the "use" immunity granted them under Section 6002 was not an adequate substitute for the privilege against self-incrimination and that full "transactional" immunity is required by the Fifth Amendment. The statute provides that "no testimony or other information compelled under the order

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(or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order."

The issue whether "use immunity" is sufficient to meet the requirements of the Fifth Amendment's privilege against self-incrimination is before this Court in *Zicarelli* v. *New Jersey Commission of Investigation*, No. 91, this Term, probable jurisdiction noted March 1, 1971. *Zicarelli* involves a New Jersey statute which limits the immunity given to use of "responsive evidence produced by [a witness], or evidence derived therefrom * * * to expose him to criminal prosecution or penalty or to a forfeiture of his estate * * *." N.J.S.A. 52:9M–17(b). Because of the importance of the federal statute involved in the instant case, which differs to some extent from the New Jersey statute, we believe that it would be desirable for the Court to have the instant case before it when it considers the "use immunity" issue. For that reason, we urge the Court to grant the petition in this case and set the case down for argument together with *Zicarelli* next Term.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1971.

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